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C O N F I D E N T I A L ABUJA 001134

SIPDIS

DEPARTMENT FOR: PM/B, L, T, P, D, IO, S/WCI, S/P, CWG/PM,
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AF FOR DAS BRIDGEWATER
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OSD/ISP/NP FOR LOOK,
DOD/OGC FOR ALLEN

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TAGS: [PREL](#) [PGOV](#) [MARR](#) [MOPS](#) [KTIA](#) [NI](#) [KICC](#)

SUBJECT: NIGERIA SIGNS ARTICLE 98 AGREEMENT

CLASSIFIED BY AMBASSADOR HOWARD F. JETER; REASONS 1.5 (B)
AND (D)

1. (U) On June 30, during a private signing ceremony at the Ministry of Justice, Solicitor-General I.A. Ayua signed the Article 98 Agreement on behalf of the Federal Republic of Nigeria. Ambassador Jeter signed on behalf of the United States. Signed original has been sent to L/T via registered pouch 2105851.

2. (C) At first, Ayua said the GON saw Article 98 as a treaty requiring ratification by the National Assembly. Ambassador Jeter explained, however, that the Rome Statute, by including Article 98 contemplated that a party to the treaty would enter into such agreements. Consequently, when the Nigerian National Assembly ratified the Statute, the Nigerian National Assembly also assented to the possibility of Nigeria entering into such an agreement. Because the Statute has been ratified, there was little value or necessity in ratifying an act expressly approved by the Statute.

3. (C) Responding positively to this line of reasoning, Ayua conceded that National Assembly ratification might not be required afterall. Ayua also mentioned that President Obasanjo had told him he wanted the "entire issue behind him" in time for President Bush's upcoming visit.

4. (C) We are preparing a non-paper for the GON outlining the argument in favor of treating Article 98 as an Executive Agreement. Obasanjo's desire to resolve the issue before President Bush's visit may weigh heavily on the GON's decision to handle this as an executive agreement or treat.

5. (C) Ambassador also raised the possible desirability of Nigerians concluding Article 98 agreements with member-states in the West African Sub-region, recalling the allegations of gross human rights abuses by Nigerian troops taking part in peacekeeping operations in Liberia and Sierra Leone. Had the Rome Treaty existed at that time, Nigerian soldiers could have been subject to the jurisdiction of the Court, whether the allegations were true or not. The Solicitor-General took these points and directed his staff to explore the possibility of concluding Article 98 Agreements with member states of ECOWAS.

6. (C) In any event, President Obasanjo took a positive and courageous decision. Now we have Africa's largest country on the right side of the Article 98 ledger. We should be able to use Nigeria's gravitational pull to influence other African nations, especially other countries in West Africa.

JETER